Supreme Court, U.S.
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21-5245

No.

IN THE SUPREME COURT OF THE UNITED STATES

Jamie Patrick: Hahn – PETITIONER

vs.

THE STATE OF GEORGIA – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE GEORIGA COURT OF APPEALS

PETITIONER FOR WRIT OF CERTIORARI

ORIGINAL

Jamie Patrick: Hahn
U.S. Army Veteran
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196 Laying Farm Road
Milledgeville, Georgia 31061

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QUESTIONS PRESENTED

1. Will this Court review the fact of the Respondent's vindictive prosecution? The record of the case shows the vindictiveness and the lower courts denial goes against decisions of this Court.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Decatur County Superior Court
Criminal Indictment No. 17-CR-29

Joseph K. Mulholland
District Attorney Office
South Georgia Judicial Circuit
114 South Broad Street
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

The opinion of the Georgia Court of Appeals appears at Appendix A to the Petition and is reported at – *Hahn v. State 356 Ga. App. 79; 846 S.E. 2d 258 (2020).*

JURISDICTION

The date on which the highest State Court decided my case was 15 March 2021. A copy of that decision appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

- The Constitution of the United States of America
  - *Amendment V*: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
  - *Amendment XIV*: "1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
- The Constitution of the State of Georgia
  - *Article 1, Section 1, Paragraph 1*: "No person shall be deprived of life, liberty or property except by due process of law."
  - *Article 1, Section 1, Paragraph 11*: "Protection of person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.
  - *Article 1, Section 1, Paragraph VII*: "All citizens of the United States, resident in this state, are hereby declared citizens of this State, and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due such citizenship."

STATEMENT OF THE CASE

Mr. Hahn was convicted of five counts of Child Molestation – on May 15, 2018 – in violation of O.C.G.A. §16-6-4(a)(1). The trial court sentenced Mr. Hahn to 20 years on Count 1; 5 years on Count 2 (consecutive to Count 1), 5 years on Count 3 (consecutive to Count 2), 5 years on Count 4 (consecutive to Count 3), and 10 years on Count 5 with the first 5 to be served in confinement (concurrent with Count 4) followed by 5 years probation. For a total sentence of 35 years in prison and 5 years probation.

Mr. Hahn initially indicted in 2011 on one count of child molestation to which he plead guilty, and one count of aggravated child molestation, which was nolle prossed. - *See Appendix H* After the Court of Appeals vacated Mr. Hahn's conviction, - *Hanh v. State 338 Ga. App. 498 (2016),* the prosecutor stated, at a post appeal hearing in case no. 11-CR-220, that, if Mr. Hahn chose to withdraw his guilty plea (which the Court of Appeals had specifically ruled he could), the prosecutor "would take this back to the grand jury and attempt to indict him on five counts of child molestation so instead of facing 19 years serve one, he's looking at 100 years." – *See Appendix F at 5-6* Mr. Hahn chose to withdraw his plea, and the prosecutor made good on his threat by filing a second indictment charging Mr. Hahn with five counts of Child Molestation.

Mr. Hahn filed a Motion for New Trial and amended said motion on May 22, 2018. Said motion was amended again on May 21, 2019, and again on August 6, 2019. Trial court denied said motion on September 5, 2019.

Mr. Hahn filed a Notice of Appeal on September 26, 2019.

The Georgia Court of Appeals docketed the case on October 17, 2019. Two extensions of time were filed one on November 2, 2019 and one on December 10, 2019. Mr. Hahn filed his brief on January 24, 2020.

The State of Georgia attempted to file for an extension on March 2, 2020-, after missing the deadline to file and being in contempt of court. The Court of Appeals denied the States request.

This case was put off by the Court of Appeals due to the COVID-19 outbreak and not heard during it's scheduled April 2020 term hearing date.

On June 30, 2020 the Court of Appeals ruled on Mr. Hahn's case as follows: sentence was vacated and remanded back to the trial court; all other claims denied and judgment affirmed. *See Appendix A*

Mr. Hahn filed a Notice of Intention to Apply For Certiorari on July 07, 2020 – using the mailbox rule – pro se because assigned public defense counsel abandoned the continued appeal process.

The Georgia Supreme Court docketed this case on July 16, 2020. This was scheduled to be heard in November 2020, but was delayed due to COVID-19 as well.

The State of Georgia filed a compound motion to the Supreme Court of Georgia on September 25, 2020 responding to Mr. Hahn's brief and making its own petition for certiorari against the sentence remand by the Court of Appeals – original resentence hearing scheduled for the beginning of October 2020. -. This petition against the resentencing cancelled said date for the hearing. *See Appendix J*

The Supreme Court of Georgia docketed the State's case even though brief response and petition were out of time.

On March 15, 2021 The Supreme Court of Georgia upheld the Court of Appeals decision concerning the sentencing and dismissed the State's petition as untimely. *See Appendix D*

On March 15, 2021 The Supreme Court of Georgia denied Mr. Hahn's petition for Certiorari. *See Appendix C*

Mr. Hahn is now petitioning the United States Supreme Court to review his case because of the State of Georgia's abuse of discretion and the denial of his Constitutionally protected rights which the State has trampled upon disregarding previous decisions of this Court.

REASON FOR GRANTING PETITION

Issue One

Hahn was Improperly Subjected to a Vindictive Prosecution.

The Court of Appeals decision on this issue is in error. Where Hahn was originally indicted with one count of child molestation and sentenced to 20 years to serve and upon exercising his right to withdraw his plea – authorized by the Court of Appeals – Hahn was re-indicted on 5 counts of child molestation and sentenced to 40 years with 35 to serve.

The Court of Appeals claims that because it remanded the case back to the trial court for resentencing, as to merging the 5 counts of child molestation, their was no vindictiveness. *(Hahn v. State 356 Ga. App. 79; 846 S.E. 2d 258 (2020); See Appendix A at 9-10* This is not the case because the Court of Appeals is relying on hind sight and its partial remand of this case is to avoid a full reversal. The State and its actions must be evaluated based upon what occurred during pretrial and trial stage. Not decisions that come after in an attempt to negate violations of law.

Hahn was initially indicted in 2011 on one count of child molestation and one count of aggravated child molestation, which was nolle prossed when he plead guilty to child molestation. – *See Appendix H.* After the Court of Appeals vacated Hahn's child molestation conviction, (*See Hanh v. State 338 Ga. App. 498 (2016)*), the prosecutor filed a second indictment charging five counts of child molestation. At a post-appeal hearing in the initial case, the prosecutor state that he did not have sufficient evidence to pursue the previously nolle prossed charge of aggravated child molestation, but if Hahn chose to withdraw his guilty plea (which the Court of Appeals had ruled he could), the prosecutor "would take thise [case] back to the grand jury and attempt to indict him on five counts of child molestation so that instead of facing 19 years serve one, he's looking at 100 years." – *(See Appendix F – Transcript of Dec. 20, 2016 hearing, at 5-6)*

In general, the State is not preluded from reindicting a defendant on added or modified charges, as long as jeopardy has not yet attached to the first indictment. – *Metts v. State 297 Ga. App. 330, 334 (2009).* However, "[a]n exception to this general rule exists where the subsequent indictment increases the severity of the charges in response to the defendant's exercise of certain procedural rights, which raises the appearance or relation or prosecutorial vindictiveness." – *Metts v. State 207 Ga. App. At 334-35; see also Blackledge v. Perry 417 US 21 (1974); cf. Griffin v. State 266 Ga. 115, 119-20 (1995) (discussing Blackledge and distinguishing it where prosecutor*

sought death penalty after a mistrial resulting from jury's failure to reach a verdict, rather than after a mistrial resulting from jury's failure to reach a verdict, rather than after a successful appeal.) "Pursuant of a course of action designed to penalize one's reliance on a legal right is patently unconstitutional." – *Salee v. State 329 Ga. App. 612, 621 (2014) (quoting Lee v. State 177 Ga. App. 698, 700 (1) (1986)).*

In Blackledge, the defendant had been convicted of a misdemeanor assault in North Carolina's District Court Division, which had exclusive jurisdiction over misdemeanors. Id., 417 US at 22. Under North Carolina law, a defendant convicted of a misdemeanor has an absolute right to appeal by requesting a trial de novo in the Superior Court. Id. After the defendant in Blackledge filed his notice of appeal seeking a denovo trial, the prosecutor obtained an indictment, "[c]overing the same conduct for which Perry had been tried and convicted in the District Court," charging Perry with Felony Assault. Id. at 23. Perry then entered a plea of guilty in the North Carolina Superior Court. Id.

Later, the U.S. Supreme Court affirmed a lower federal court's decision to grant Perry's petition for a writ of habeas corpus. *See Blackledge at 23-24.* That court concluded that Perry's due process rights had been violated when the prosecutor increased the charges against him post-appeal. *See id. at 25-29.* Although "The Due Process clause is not offended by all possibilities of increased punishment upon retrial after appeal." It is offended when "a realistic likelihood of 'vindictiveness'" is present even if the prosecutor did not in fact act in bad faith. *Id. at 27-28.* The Court's decision "was not grounded upon the proposition that assert his due process claim even though guilty pleas normally preclude attacks on the charging indictment. In the typical case, unlike in Blackledge (and unlike here), the challenges to guilty pleas do not go "to the very power of the State to bring the defendant into court to answer the charge brought against him." *Id. at 30.* The Court explained:

> Having chosen originally to proceed on the misdemeanor charge in the District Court, the State of North Carolina was, under the facts of this case, simply precluded by the Due Process Clause from calling upon the respondent to answer to the more serious charges in the Superior Court...Perry is not complaining of "antecedent constitutional violations" or of a "deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Rather, the right that he asserts and that we today accept is the right not to be haled into court at all upon the felony charge. The very initiation of the proceedings against him in the Superior Court thus operated to deny him due process of law.

Id. at 30-31 (citation omitted).

The "practical result" of the holding in Blackledge "is to prevent a trial from taking place at all, rather than to proscribe procedural rules that govern the conduct of trial." *Id. at 31; see also Hooten v. State 212 Ga. App. 770, 770-71 (1994)* (holding that "an unconditional guilty plea does not preclude appeal of a claim of error grounded upon the 'right not to be haled into court at all,' that is, jurisdictional and generally double jeopardy-type errors"). Similarly, "the 'practical result' dictated by the Due Process Clause" in Hahn's case is that Georgia "simply couldn't not permissibly require [him] to answer to the [quintupled] charge." *Id.*

In the State's Appellate Brief they rely on in part Sabel v. State 250 Ga. 640 (1983). – *See Appendix I at 9.* Because that case concerns selective prosecution – not vindictiveness for exercise of a constitutional right – it has no application here. *See Sabel 250 Ga. At 643.* "To establish prosecutorial vindictiveness, the defendant must either provide evidence of actual vindictiveness or show that the particular circumstances of his case give right to a presumption of vindictiveness." *Gerber v. State 339 Ga. App. 164, 180 (2016) (emphasis added).*

The State also relied on Bordenkircher v. Hayes 434 U.S. 357 (1978), and its progeny. – *See Appendix I at 9-10.* In Bordenkircher, the U.S. Supreme Court held that a prosecutor had not acted improperly when he increased charges against a defendant after unsuccessful plea negotiations - *See Bordenkircher, 434 US at 358-61.* Significantly, the prosecutor had warned the defendant about increased charged during plea negotiations, which served to distinguish the case from the circumstances present here. – *See Bordenkircher, 434 US at 358-59.* The Court explained:

> It may be helpful to clarify at the outset the nature of the issue in this case. While the prosecutor did not actually obtain the recidivist indictment until after the plea conferences had ended, his intention to do so was clearly expressed at the outset of the plea negotiations. Hayes was thus fully informed of the true terms of the offer when he made his decision to plea not guilty. This is not a situation, therefore where the prosecutor without notice brought an additional and more serious charge after plea negotiations relating only to the original indictment had ended with the defendant's insistence on pleading not guilty. As a practical matter, in short, this case would be no different if the grand jury had indicted Hayes as a recidivist from the outset, and the prosecutor had offered to drop that charge as part of the plea bargin.

Bordenkircher, 434 US at 360-6 (emphasis added). Unlike in Bordenkircher, the prosecutor in Hahn's case increased the charges against him only after – Four years later – plea negotiations on the original charge had ended and only after a successful appeal which the Court of Appeals expressly authorized the withdrawal after Hahn had insisted on pleading not guilty. (Original plea was illegal. – *See Hanh v. State 338 Ga. App. 498 (2016).).*

The State complained that Hahn failed "to present actual evidence of vindictiveness" by "fail[ing] to call the prosecuting attorney during the motion for new trial hearing." – *See Appendix I at 10-11, citing Gerbert, supra*). Gerber is distinguishable on its facts. The defendant in that case relied on statements allegedly made by the prosecutor outside of court. At the hearing on the defendant's motion for new trial, he failed to elicit testimony confirming that the prosecutor had in fact made the alleged statements. – *See Gerbert 339 Ga. App. At 181.* For this reason, the Court concluded that no evidence of the alleged statements had been presented. Id.

Hahn, in contrast, was not required to call the prosecutor as a witness, or to question his trial attorney about what the prosecutor had said, because the prosecutor made the statements in open court proceedings, and those statements appear in the official certified court record. By submitting the transcript of the Dec. 20, 2016 hearing as an exhibit in support of his motion for new trial, Hahn satisfied the requirement that he present actual evidence of vindictiveness. – *See Appendix F*

Furthermore, contrary to the State's argument, Hahn is not required to prove actual vindictiveness or vindictive intent. He may also "show that the particular circumstances of his case give rise to a presumption of vindictiveness." *Gerbert 339 Ga. App. At 180; see also Blackledge v. Perry 417 US 21, 27-28 (1974) (holding that a due process violation occurs when "a realistic likelihood of 'vindictiveness'" is present even if the prosecutor did not in fact act in bad faith).*

Looking at the decision handed out by the Court of Appeals claims that "no evidentiary hearing before the trial court regarding the allegation of prosecutorial vindictiveness," which in and of itself is a false statement because Hahn raised the vindictive prosecution claim at his hearing on the motion for new trial. *Hahn v. State Appendix A at 9.* When argument and evidence is submitted to the trial court at a hearing concerning the vindictiveness claim how can the Court of Appeals state that no hearing took place. The case record refutes this statement and the presented evidence proves Hahn's claim of vindictiveness. The Court of Appeals further stated that their was no increase in severity in the sentence. As stated above Hahn was sentenced to 40 years 35 to serve; where his original sentence was 20 years to serve.

The was an increase by the trial court. The Court of Appeals claims that because it remanded the case back to the trial court for resentencing – as to merging the five counts of child molestation – their was no vindictiveness. This is not the case because the court is relying on hindsight and its partial remand of this case in an attempt to avoid a full reversal. The State and its actions must be evaluated based upon everything that happened at the trial court level and not make decisions after to attempt to negate violations of law.

The Federal Court set out a standard for review in Nat'l Eng'g & Contracting Co. v. Herman 181 F.3d 715, 723 (6th Cir. 1999), "Vindictive prosecution involves (1) exercise of protected rights; (2) the prosecutions 'stake' in the exercise of the protected rights; (3) the unreasonableness of the prosecutors conduct; and presumability; (4) that the prosecution was intitated with the intent to punish the plaintiff for exercising of the protected right.". Hahn was attacked by the State because he exercised a right allowed by the Court of Appeals. "Presumption of vindictiveness when prosecutor brought charges carrying potentially greater sentence when original charge, provided circumstances demonstrate, either actual vindictiveness or realistic fear of vindictiveness." *United States v. Taylor 749 F.2d 1511, 1513 (11th Cir. 1985) (emphasis added).* Wherein the State claimed to come after Hahn for 100 years during the Dec. 20, 2016 hearing. – *See Appendix F*

To further show the State's vindictiveness towards Mr. Hahn; after the Court of Appeals decision the State filed for certoriari against the merger of counts to the Georgia Court of Appeals. *(See Appendix J at 7-9).* The State's filing of this petition came only after the trial court had scheduled a resentencing hearing for October 2020.

Properly the Georgia Supreme Court dismissed the State's petition as untimely because it was way out of time for both a response and a new petition. – See *Appendix D*

As seen by the State's actions it continued to pursued Mr. Hahn for greater time upon his exercised right in appeal.

Hahn has met the presumption threshold on a claim of vindictiveness prosecution in multiple ways. Hahn's due process right has been violated in this case with the additional charges that he faced at trial. Hahn never have gone before a jury with these additional counts. A full reversal is the proper remedy with instructions to dismiss the indictment. "It is handbook law that Federal court may dismiss and indictment if the accused provides evidence of actual prosecutorial vindictiveness

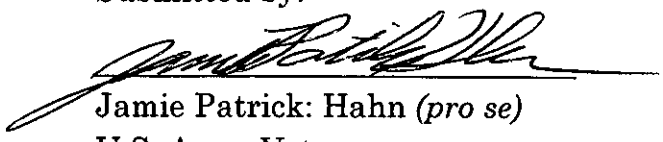
sufficient to justify a presumption." *United States v. Stocks 124 f.3d 39, 45 (1st Cir. 1997).*

CONCLUSION

This petitions for certiorari should be granted for the reason stated herein and the hope of Mr. Hahn that this court corrects the constitutional violations against him.

Submitted this 18th day of May, 2021

Submitted by:



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